

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Genuine Truth Banner,)	Case No.: 6:23-cv-1446-JD-KFM
)	
Petitioner,)	
)	
vs.)	
)	OPINION AND ORDER
Warden Terri Wallace,)	
)	
Respondent.)	
)	

This matter is before the Court with the Report and Recommendation (“Report”) of United States Magistrate Judge Kevin F. McDonald, made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02(B)(2)(e) of the District of South Carolina.¹ (DE 7.) Petitioner Genuine Truth Banner (“Petitioner” or “Banner”), proceeding *pro se*, filed a Petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 action against respondent Warden Terri Wallace (“Respondent” or “Warden”) seeking review of a disciplinary conviction for assault and battery of an SCDC employee with the means and/or intent to kill or injure. (DE 1, p.1.) The Petitioner was sentenced to time-served in solitary confinement and the loss of 12 days good time credit as a result of the disciplinary conviction. (*Id.*) The Petitioner argues that the disciplinary conviction is invalid based upon violations of his due process, equal protection, and double jeopardy rights. (DE 1, pp. 5-10.) For relief, Petitioner seeks to have his disciplinary conviction overturned. (DE 1, p.14.)

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The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Report was issued on May 16, 2023, recommending dismissal of the Petition without prejudice because Banner has failed to exhaust his state court remedies. (DE 7.) Petitioner has not filed an objection to the Report. In the absence of objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983). The Court must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Therefore, after a thorough review of the Report and Recommendation and the record in this case, the Court finds that there is no clear error on the face of the record, and therefore, adopts the Report (DE 7) and incorporates it herein.

It is, therefore, **ORDERED** that Petitioner’s case is dismissed without prejudice. Further, it is **ORDERED** that a certificate of appealability is denied because Petitioner has failed to make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

S/ Joseph Dawson, III

Joseph Dawson, III
United States District Judge

Florence, South Carolina
July 18, 2023

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.